

Election with Traversal

The Examiner identifies three sets of claims (claims 1-40, 96-126; claims 41-71, 127-160; claims 71-95) as belonging to distinct species of invention. Restriction Requirement, at 2. Based on that identification, the Examiner requires that Applicants elect one of the alleged species for further prosecution on the merits. *Id.* at 4. The Examiner further provides that upon the allowance of a generic claim, additional species may be considered which depend from or otherwise require all the limitations of the allowable generic claim. *Id.* at 6.

Respectfully, Applicants traverse the forgoing Restriction Requirement on the ground that the identification and restriction of the alleged species fails to comply with 37 C.F.R. § 1.141. Rule 141 provides, in pertinent part:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of *an* invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

37 C.F.R. § 1.141 (a) (*emphasis added*). Accordingly, claims can be restricted if they are directed to more than one distinct inventions; if *one* invention is deemed to include multiple species, an election of species may be required, provided that additional species can be added upon a finding of an allowable generic claim.

Importantly, unlike the restriction of multiple inventions (claims) which applies to groups of distinct claims, by definition the species election concerns *one* invention or one group of claims. Here, the Examiner fails to identify to which invention (claim(s)) the alleged multiple species belong. Put another way, although the instant Restriction Requirement is characterized as an election of species, it restricts the pending claims into three groups of claims. Thus, as issued the instant Restriction Requirement is inapposite. The withdrawal thereof is respectfully requested.

Furthermore, Applicants respectfully submit that the prosecution of the instant application on the merits has already commenced (a first office action was issued on May 1, 2007), and that the parent of the instant application was issued on September 5, 2006 to Applicants as U.S. Patent No. 7,103,772 without any restriction of the claims. Applicants believe that the instant application relates to a single coherent inventive concept, namely,

the use of an intelligent data carrier in conjunction with a dynamic datagram switch for data transmission and application sharing in a secured network servicing multiple users.

Therefore, no restriction of groups of claims or election of species within any claims is warranted.

For the above reasons, Applicants traverse the instant Restriction Requirement.

By this responsive communication, Applicants elect with traversal "Species 1," claims 1-40 and 96-126, for further prosecution on merits.